RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—WHAT ACTS OF STRANGERS CONSTITUTE AN INTERRUPTION.—Claimant by adverse possession showed that he had fenced in the land in controversy, and had used it for pasturing cattle during a period sufficient to satisfy the Statute of Limitations. Defendant offered evidence to show that strangers had trapped upon this land during the greater part of this period, and that one party in particular had repeatedly set traps there over protests of the adverse claimant, and that no action had been successfully prosecuted against him,—although adverse claimant had threatened to prosecute. It did not appear whether the trespasses were repeated after this time. *Held,* that adverse possession had been made out, and that the acts of strangers referred to did not constitute an interruption. *Bloodsworth* v. *Murray,* (Md., 1921), 114 Atl. 575.

The general rule as given by CYC. is: "The intrusion of a trespasser will in no case interrupt the continuity of an adverse possession, unless continued for such a length of time that knowledge of the intrusion is presumed, or so (continued) as to become the assertion of an adverse right. If they (the intrusions) are known they become assertions of right and operate to break the continuity, unless legal remedies are resorted to within a reasonable time to regain possession, and are prosecuted to a successful determination." 1 CYC. 1011, 2 CORPUS JURIS 98. This statement may be found repeated in effect in not a few cases. *Beard* v. *Ryan,* 78 Ala. 37; *Woodstock Iron Co.* v. *Roberts,* 87 Ala. 436. The basis of such a rule would seem to be the doctrine that the holding must be hostile to the world, and not merely to the legal owner. But with few exceptions, the cases in which this statement of the rule is found are either cases where there have been only isolated trespasses and so no interruption in any event, or else cases where legal remedies had successfully been resorted to. *Love* v. *Turner,* 78 S. C. 513, 519; *Sparks* v. *Bodensick,* 72 Kan. 5, 8. On the other hand, in the later cases where the question has been squarely presented by evidence of continued trespasses or repeated intrusions, the courts have almost always held that the acts in question did not constitute an interruption; and in not a few cases have indicated that the acts of a stranger must amount to an actual disseisin of the adverse occupant to have such an effect. *Inhabitants of Cohasset* v. *Moors,* 204 Mass. 173, 178; *Batchelder* v. *Robbins,* 95 Mo. 59; *Glover* v. *Pfeuffer,* (Tex. Civ. App., 1914) 163 S. W. 984. The rule which the latter cases seem to favor is more consonant with the modern theory that the holding need not be hostile to the world, but merely to the title holder. See TIFFANY ON REAL PROPERTY, § 503.

AGENCY—LIABILITY OF THIRD PERSON TO UNDISCLOSED PRINCIPAL ON SEALED CONTRACT.—In an action for specific performance of a contract to make a lease the complaint stated that the agent who signed the contract

in his own name was known by defendant to have been acting as agent for plaintiff. Demurrer sustained by lower court. Held complaint should have been sustained as stating a cause of action. *Lagumis* v. *Gerard* (1921) 190 N. Y. S. 207.

Will the court of appeals sustain this revolutionary, but very sensible, decision of the supreme court? Judge Cropsey, on the strength of *Harris* v. *Shorall,* 230 N. Y. 343 (1921), thinks it will. Pound, J. there said: "When so much of the old value and high nature of the seal has been lost, the court should not be tenacious to preserve one of its minor incidents for the sake of the rule, but should rather strive to give to the real agreement of the parties." He notes, however, that there may be some reluctance to vary an established rule, and is perhaps relieved that the instant case can be decided on other grounds, leaving this point for final decision when a case is presented compelling a decision. *Lagumis* v. *Gerard* is not the only New York case allowing an action by an undisclosed principal on a contract under seal, but on which a seal was unnecessary. See *e. g. Campbell* v. *Poland Spring Co.,* 187 N. Y. S. 643 (1921). But the court of appeals as late as *Case* v. *Case,* 203 N. Y. 263 (1911) held that "nothing is more definitely settled in our law than that an instrument under seal cannot be enforced by or against one who is not a party to it. This is so elementary as to be axiomatic." This case has been cited at least nine times by New York inferior courts, though often to make distinctions taking the case out of the rule. See *Staff* v. *Bemis Realty Co.,* 183 N. Y. S. 886; *O'Grady* v. *Howe Company,* 152 N. Y. S. 79; *Lockwood* v. *Smith,* 143 N. Y. S. 480.

The instant case, however, is the first in New York to take the rule as to sealed instruments by the collar and pitch it out of court as "an arbitrary, unreasonable rule, which never accomplishes any good, and is used only to prevent the administration of justice." In some other jurisdictions courts have accomplished as much without saying so with such brutal frankness. *Woolsey* v. *Henke,* 125 Wis. 134.

APPEAL AND ERROR—COMPETENT EVIDENCE EXCLUDED—ERROR PRESUMED PREJUDICIAL.—The appellant in a civil suit assigned as error the exclusion of competent, material evidence offered by him. *Held,* case must be reversed, for error is presumed prejudicial unless from the record it appears that the error has worked no prejudice to the objecting party. *Borough* v. *Minneapolis & St. L. Ry. Co.,* (Ia. 1921) 184 N. W. 320.

To secure a reversal in the early common law because of error in the exclusion of competent evidence, the appellant had to show that its admission would probably have resulted in a judgment in his favor. *Tyrwhitt* v. *Wynne,* (1819) 2 Barn. & Ald. 554, and where incompetent evidence was admitted, the court refused a new trial when there was sufficient evidence, without that erroneously admitted, to warrant the finding of the jury. *Doe* v. *Tyler,* (1830) 6 Bing. 561, but the court rejected these salutary rules in *Crease* v. *Barrett,* (1835) 1 Crompton M. & R. 918, because of a fear that the courts would assume the duties of the jury and that a careless treatment